

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1340-01
Bill No.: SB 406
Subject: Insurance Dept.; Insurance - General; Evidence
Type: Original
Date: February 11, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 4 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Department of Insurance** and **Office of Prosecution Services** assume the proposal will not fiscally impact their organization.

Officials from the **Office of Attorney General (AGO)** state they assume that the costs of this proposal are unknown. The AGO does anticipate additional costs related to obtaining documents in civil or criminal cases where “audit privileged” documents are at issue because the proposal provides for additional in-camera review procedures. The AGO projects unknown costs to be less than \$100,000 annually.

FISCAL IMPACT - State Government

FY 2004
(10 Mo.)

FY 2005

FY 2006

GENERAL REVENUE FUND

HW-C:LR:OD (12/02)

Costs - Office of Attorney General

Additional litigation expense	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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**ESTIMATED NET EFFECT ON
 GENERAL REVENUE FUND**

<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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FISCAL IMPACT - Local Government

FY 2004 (10 Mo.)	FY 2005	FY 2006
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal makes information collected in the course of an insurance compliance audit privileged information and not discoverable in civil, criminal or administrative proceedings unless an exception applies.

Audit documents submitted to the Director of Insurance are confidential. Audit documents submitted to the department of insurance remain property of the insurer and are not subject to disclosure under the Sunshine Law. Persons preparing the audit documents shall not be examined in civil, criminal or administrative hearings unless the documents are not privileged.

The privilege established in this proposal shall not apply to documents which are expressly waived. A court may require disclosure of materials, after in-camera review, if it determines that the privilege was asserted for a fraudulent purpose or that the privilege does not apply. A court may order disclosure of materials in a criminal proceeding, after in-camera review, if it determines that the privilege was asserted for a fraudulent purpose, that the privilege does not apply or that material contains relevant evidence of a crime which is not otherwise available.

DESCRIPTION (continued)

An insurer may voluntarily submit the audit to the Department of Insurance without waiving the privilege. The privilege is deemed to be waived by the insurer 30 days after receiving a request

for disclosure of a self-evaluative audit by the Department or a prosecutor, unless the insurer files a petition for an in camera examination. Any compelled disclosure of an audit will not make the audit a public document.

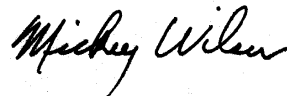
The privilege shall not apply to: (1) Documents expressly required to be collected, maintained or reported to regulatory agencies pursuant to law; (2) Information obtained by observation or monitoring by any regulatory agency; or (3) Information obtained from an independent source.

The privilege created by this proposal shall apply to all litigation or administrative proceedings pending on the effective date of this proposal.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of State Courts Administrator
Department of Insurance
Office of Prosecution Services



MICKEY WILSON, CPA
DIRECTOR
FEBRUARY 11, 2003